CHAPTER Env-A 4000 PORTABLE FUEL CONTAINER SPILLAGE CONTROL

Statutory Authority: RSA 125-C:4, I(n); RSA 125-C:6, XVII; and RSA 485:16-c

PART Env-A 4001 PURPOSE, APPLICABILITY, EXEMPTIONS, AND REFERENCES

Env-A 4001.01 Purpose. The purpose of this chapter is to limit emissions of volatile organic compounds (VOC) by requiring new portable fuel containers to meet performance standards as required by NH Laws of 2004, 175:1, I.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4001.02 Applicability. Except as provided in Env-A 4001.03, this chapter shall apply to any person who sells, supplies, offers for sale, advertises, or manufactures for sale in New Hampshire any portable fuel container or spout, or both, for use in New Hampshire.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4001.03 Exemptions.

(a) This chapter shall not apply to any portable fuel container or spout, or both, manufactured in New Hampshire for shipment, sale, and use outside of New Hampshire.

(b) This chapter shall not apply to safety cans meeting the requirements of 29 CFR 1926, Subpart F.

(c) This chapter shall not apply to any portable fuel container with a nominal capacity of one quart or less.

(d) This chapter shall not apply to rapid refueling devices with nominal capacities of 4 gallons or more, provided such devices:

(1) Are designed for use in officially sanctioned off-highway motorcycle or off-highway automobile competitions; or

(2) Create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

(e) This chapter shall not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4001.04 References. For the purpose of this chapter, unless otherwise specified, the July 1, 2004 edition of title 29 of the Code of Federal Regulations (CFR) shall control all references to 29 CFR 1926.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

PART Env-A 4002 DEFINITIONS

Env-A 4002.01 “Automatic closure” means a device or mechanism that causes a spill-proof system or spout to close, seal, and remain completely closed when not dispensing fuel.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4002.02 "Automatically close" means closure occurs through the activation of a device or mechanism that causes a spill-proof system or spout to close, seal, and remain completely closed when not dispensing fuel.

Source. #9064, eff 1-9-08

Env-A 4002.03 "Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout, or both, for personal, family, household, or institutional use. Persons acquiring a portable fuel container or spout, or both, for resale are not "consumers" for that product.

Source. #9064, eff 1-9-08

Env-A 4002.04 "Distributor" means any person to whom a portable fuel container or spout, or both, is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers, and consumers.

Source. #9064, eff 1-9-08

Env-A 4002.05 "Fuel" means any liquid hydrocarbon mixture used to power any spark-ignition internal combustion engine.

Source. #9064, eff 1-9-08

Env-A 4002.06 "Kerosene" means any light petroleum distillate that is commonly or commercially known, sold, or represented as kerosene, that is used in space heating, cook stoves, or water heaters, and is suitable for use as a light source when burned in wick-fed lamps.

Source. #9064, eff 1-9-08

Env-A 4002.07 "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a portable fuel container or spout, or both.

Source. #9064, eff 1-9-08

Env-A 4002.08 "Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

Source. #9064, eff 1-9-08

Env-A 4002.09 "Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

Source. #9064, eff 1-9-08

Env-A 4002.10 "Permeation" means the process by which individual fuel molecules can penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

Source. #9064, eff 1-9-08

Env-A 4002.11 "Portable fuel container" means any vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed, supplied, sold, advertised, offered for sale or used for receiving, transporting, storing, and dispensing fuel or kerosene. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled as described in 49 CFR §172.407(a), as it existed on September 15, 2005, with language indicating said containers or vessels are solely intended for use with non-fuel or non-kerosene products.

Source. #9064, eff 1-9-08

Env-A 4002.12 "Product category" means the applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the department.

Source. #9064, eff 1-9-08

Env-A 4002.13 "Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

Source. #9064, eff 1-9-08

Env-A 4002.14 "Retail outlet" means any establishment at which a portable fuel container or spout, or both, is sold, supplied, or offered for sale.

Source. #9064, eff 1-9-08

Env-A 4002.15 "Spill-proof spout" means any spout that complies with all of the performance standards specified in Env-A 4003.02, and with all of the labeling requirements specified in Env-A 4004.01.

Source. #9064, eff 1-9-08

Env-A 4002.16 "Spill-proof system" means any configuration of portable fuel container and spout that complies with all of the performance standards specified in Env-A 4003.01, and all of the labeling requirements specified in Env-A 4004.01.

Source. #9064, eff 1-9-08

Env-A 4002.17 "Spout" means any device that is designed to be attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed, not including a device that can be used to lengthen the spout to accommodate necessary applications.

Source. #9064, eff 1-9-08

Env-A 4002.18 "Supply" means to sell or otherwise provide a portable fuel container to another entity. The term does not include an internal transaction within a governmental entity.

Source. #9064, eff 1-9-08

Env-A 4002.19 "Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

Source. #9064, eff 1-9-08

PART Env-A 4003 PERFORMANCE STANDARDS FOR PORTABLE FUEL CONTAINERS AND SPILL-PROOF SPOUTS

Env-A 4003.01 Performance Standards for Portable Fuel Containers and Spill-Proof Systems.

(a) Except as provided in Env-A 4001.03:

(1) No person shall sell, supply, offer for sale, advertise, or manufacture for sale in New Hampshire any portable fuel container or portable fuel container and spout which, at the time of sale or manufacture, does not meet all of the performance standards for spill-proof systems specified in (b) through (f), below.

(2) No person shall sell, supply, offer for sale, advertise, or manufacture for sale in New Hampshire, nor introduce, deliver or import into New Hampshire for use, any portable fuel container or portable fuel container and spout that is subject to any of the standards of this chapter, unless said portable fuel container or portable fuel container and spout is:

a. Certified for sale and use by the manufacturer through the California Air Resources Board (CARB), according to the procedure specified in "CP-501, Certification Procedure for Portable Fuel Containers and Spill-Proof Spouts," adopted by CARB on July 26, 2006; and

b. Covered by a CARB Executive Order.

(b) The portable fuel container or portable fuel container and spout shall have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(c) The portable fuel container or portable fuel container and spout shall automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel.

(d) The portable fuel container or portable fuel container and spout shall have only one opening for both filling and pouring.

(e) The portable fuel container or portable fuel container and spout shall not exceed a permeation rate of 0.4 grams per gallon per day.

(f) The portable fuel container or portable fuel container and spout shall be warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4003.02 Performance Standards for Spill-Proof Spouts.

(a) Except as provided in Env-A 4001.03, no person shall sell, supply, offer for sale, advertise, or manufacture for sale in New Hampshire any spout which, at the time of sale or manufacture, does not meet all of the performance standards for spill-proof spouts as specified in (b) through (d), below.

(b) The spill-proof spout shall have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(c) The spill-proof spout shall automatically close and seal when removed from the target fuel tank and remain completely closed when not dispensing fuel.

(d) The spill-proof spout shall be warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4003.03 Determining Compliance with Performance Standards.

(a) Prior to allowing the portable fuel container or spout, or both, to be offered for sale in New Hampshire, the manufacturer shall:

(1) Test the portable fuel container or spout, or both, using the procedures specified in Env-A 4005.01; and

(2) Demonstrate compliance with the applicable performance standards specified in Env-A 4003.

(b) The manufacturer shall maintain records of the compliance tests specified in (a), above, for as long as the product is available for sale in New Hampshire, and shall make those test results available to the department within 60 days of request.

(c) Compliance with the performance standards in Env-A 4003 shall not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

PART Env-A 4004 LABELING AND REPORTING REQUIREMENTS

Env-A 4004.01 Labeling Requirements.

(a) Each manufacturer of a portable fuel container or spout, or both, subject to and complying with Env-A 4003.01(a) shall clearly display on each spill-proof system:

(1) The phrase “Spill-Proof System”;

(2) A date of manufacture or representative date; and

(3) A representative code identifying the portable fuel container or spout, or both, as subject to and complying with Env-A 4003.01.

(b) Each manufacturer of a spout subject to and complying with Env-A 4003.02 shall clearly display on the accompanying package, or, for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

(1) The phrase “Spill-Proof Spout”;

(2) The date of manufacture or representative date; and

(3) A representative code identifying the spout as subject to and complying with Env-A 4003.02.

(c) Each manufacturer subject to (a) or (b), above, shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

(d) Each manufacturer of a spout subject to (b), above, shall clearly display on the accompanying package, or, for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto, the make, model number, and size of only those portable fuel container(s) that the spout is designed to accommodate and for which compliance with Env-A 4003.01 can be demonstrated.

(e) Each manufacturer of a portable fuel container or spout, or both, subject to and complying with Env-A 4003.01 that due to its design or other features cannot be used to refuel one or more on-road motor vehicles must clearly display the phrase “Not Intended For Refueling On-Road Motor Vehicles” in type of 34

point or greater on each of the following:

(1) For a portable fuel container or portable fuel container and spout sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

(2) For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4004.02 Prohibited Labels. Any manufacturer of a portable fuel container or portable fuel container and spout not subject to or not in compliance with Env-A 4003 shall not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout, respectively, on any sticker or label affixed thereto, or on any accompanying package.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

Env-A 4004.03 Reporting Requirements.

(a) Each manufacturer subject to Env-A 4004.01 shall file with the department a written explanation of both the manufacture or representative date and representative code.

(b) Each manufacturer shall file the explanation specified in (a), above, no later than:

(1) The later of 3 months after the effective date of this chapter or within 3 months of production; and

(2) Within 3 months after any change in coding.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

PART Env-A 4005 PERFORMANCE STANDARD TEST PROCEDURES

Env-A 4005.01 Performance Standard Test Procedures.

(a) Each manufacturer shall test to determine compliance with Env-A 4003.02 using the following test procedures:

(1) "Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, as amended on July 26, 2006; and

(2) "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000.

(b) In addition to the test procedures specified in (a), above, each manufacturer shall test to determine compliance with Env-A 4003.01 using the following test procedures:

(1) TP-502, "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers," adopted by CARB on July 26, 2006; and

(2) "Test Method 513, Determination of Permeation Rate for Spill-Proof Systems," adopted by CARB on July 6, 2000.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

PART Env-A 4006 INNOVATIVE PRODUCTS AND ALTERNATE TEST PROCEDURES

Env-A 4006.01 Innovative Products.

(a) Any manufacturer of a portable fuel container or spout, or both, that has been granted an innovative products exemption by CARB or the air pollution agency of another state and the state exemption has been approved by EPA shall be exempt from the performance standards in Env-A 4003 for the period of time that the innovative products exemption remains in effect provided that the VOC emissions from the portable fuel container or spout, or both, in the innovative products exemption will result in cumulative VOC emissions below the highest emitting spill-proof system or spill-proof spout in its product category.

(b) Any manufacturer of a portable fuel container or spout, or both, that has received approval from CARB or the air pollution agency of another state to use alternate test procedures and the state approval has been approved by EPA shall be exempt from the requirements in Env-A 4005.01 provided that the alternate methods accurately determine the VOC concentration in the product or its emissions.

(c) Any manufacturer claiming to have an exemption as specified in (a), above, or an alternate test method as specified in (b), above, shall submit to the department a copy of the exemption decision or alternate test method decision, including all conditions applicable to the exemption decision or alternate test method decision established by CARB or the air pollution agency of another state.

Source. #8358, eff 5-26-05; ss by #9064, eff 1-9-08

APPENDIX

Rule	Specific State and Federal Statutes the Rule Implements
Env-A 4000	RSA 125-C:4, I(a) & (n); RSA 125-C:6, II & XVII; RSA 485:16-c; 2004, 175:1